

DECISION



18830 *Maria*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-200501

DATE: July 15, 1981

MATTER OF: Southwestern Bell Telephone Company

DIGEST:

Although request for advice concerning applicability of Service Contract Act was made to agency prior to bid opening, fact that protest on that issue was not lodged with either agency or GAO prior to bid opening renders protest filed with GAO after bid opening untimely under section 20.2(b)(1) of Bid Protest Procedures.

Southwestern Bell Telephone Company protests the failure of the Veterans Administration (VA) to include Service Contract Act (SCA) (41 U.S.C. § 351 et seq. (1976)) provisions in Invitation for Bids (IFB) No. 674-46-80 for furnishing and installing a telephone system.

The VA and two interested parties, Universal Communication Systems, Inc. (UCS) and Fisk Telephone Systems, argue that the protest is untimely since it was not filed with this Office until one week after bid opening. In this regard, our Bid Protest Procedures, at 4 C.F.R. § 20.2(b)(1) (1980), require that protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of proposals be filed with the contracting agency or this Office prior to that date.

Southwestern Bell contends, however, that its protest is timely under sections 20.2(a) and (b)(1) of our Procedures since it initially protested to the VA prior to the bid opening date. In support of this contention, Southwestern Bell has supplied a copy of a letter dated four days prior to bid opening addressed to the contracting officer, which states as follows:

[Protest of VA Failure to Include Provisions of Service Contract Act in IFB]
017575 **115831**

"In preparing a response to Step 2 of this solicitation, I can find no reference to the requirements of the Service Contract Act. Because maintenance charges are asked for in this solicitation, it is my understanding that the Service Contract Act does apply.

"I request your assistance in obtaining an answer to this regulation. The Department of Labor explanation implies that a prevailing wage and benefit package must be set for the Temple area. All responses to Solicitation 674-2-4-80 [sic] should then be required to equal or exceed these prevailing rates.

"If the Service Contract Act does apply, I request an amendment be issued to clarify this regulation in regard to Solicitation 674-2-4-80. Please advise."

UCS argues that Southwestern Bell's letter to the contracting officer was insufficient to constitute a protest. We agree.

We have held that although a letter need not expressly use the word "protest" in order to be characterized as such, it must otherwise clearly convey an intention to protest. Pitney Bowes, Inc., B-200016, December 30, 1980, 80-2 CPD 448. In this case, Southwestern Bell's letter to the contracting officer merely asked for advice as to whether the SCA applied to the procurement. While Southwestern Bell expressed a belief that the SCA applied, its letter was clearly stated in terms of a "request [for] assistance" and nowhere manifested an intention to protest. A request for clarification cannot be substituted for the necessity of a formal protest. Hewitt Contracting Company, B-183961, July 8, 1975, 75-2 CPD 21.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel